

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

COMMUNICATIONS WORKERS OF AMERICA, )  
AFFILIATED WITH AFL-CIO, )

Petitioner, )

vs. )

NORTH CENTRAL COUNTY FIRE ALARM )  
SYSTEM, )

Respondent. )

Public Case No. 79-059

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION.**

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the Communications Workers of America, AFL-CIO, filing a petition for certification as public employee representative for all employees of the North Central County Fire Alarm System of St. Louis County. On February 20, 1980, a hearing was held in Clayton, Missouri at which representatives of the petitioner and employer were present. Upon agreement by the parties, the case was heard by Chairman Berry who submitted the case by transcript to one employer member and one employee member of the Board. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

The Employer, North Central County Fire Alarm System, is a not-for-profit corporation organized under the laws of the State of Missouri. Its members are fire

protection districts located in St. Louis County. There are presently thirteen members of the corporation, and each member fire protection district names one of its own fire protection district directors to act as a director on the Board of Directors of North Central County Fire Alarm System. The management of the corporation is by a 13-man board of directors, who then among themselves elect the officers of the corporation. The officers and directors of the corporation are part-time only, and only attend meetings, and do not take an active, day to day role in the management or workings of the corporation. They serve without pay, and receive no remuneration from the corporation for their services.

The sole business of the corporation is to act as a dispatching agency for the dispatching of fire and ambulance emergency calls for emergencies arising within the boundaries of the member districts. The corporation receives emergency calls for fire or ambulance service from individuals and then dispatches the calls and the appropriate equipment to whatever district or districts that are required to act with respect to the particular emergency involved.

The corporation operates out of its underground dispatching center located on McKibbin Road. The employees generally work in the dispatching room, where there must be at least two dispatchers on duty at all times, twenty-four hours a day, seven days a week. In the dispatching room is located all of the radio and electronic equipment necessary to conduct the dispatching services.

The corporation has nine employees, who are divided into classifications, depending upon their length of service and abilities. According to the job descriptions offered into evidence, an employee is hired as a probationary clerk dispatcher, which is a grade 5D, or the lowest classification of employment. The employee is expected to acquire necessary skills in the job and to ascend the classification ladder through a probationary period as probationary clerk dispatcher, to become a grade 4 shift leader and eventually a grade 3 supervisor.

Generally, the classifications of employees, both number of grade and title, from the highest to the lowest, are as follows: technical dispatcher, grade 1 or grade 2; supervisor of business administration, grade 2; supervisor, grade 3; shift leader, grade 4; probationary clerk dispatcher, grade 5 through grade 5D. Because of the nature of the service performed by the corporation, it is necessary that all employees, no matter what grade or title, be able to function in the capacity of a dispatcher, in the event of catastrophic emergencies which would require additional manpower, or sudden illness or emergency involving any of the dispatchers while on duty.

The duties of the probationary clerk dispatchers are to receive and dispatch emergency calls, and when there is no telephone activity, they are to train at least two hours a day with various materials that they need to be familiar with, prepare the daily log and do other work as needed.

The shift leaders, or grade 4's, are responsible for the operation of the shift that they are assigned to, and are in charge of the operations of the Alarm Center during their shift, seeing that calls are dispatched properly and that all jobs assigned are completed. In addition to the shift work, the shift leaders also oversee the training of new dispatchers. They are also involved in the evaluating of probationary clerk dispatchers in that they must complete probation reports.

The supervisors, grade 3, are responsible for the daily operations of the Alarm Center, and are responsible for the training program, maintaining monthly reports, inventories and other specialized functions. These duties are divided and assigned to specific supervisors. In addition, all supervisors write probationary reports and make recommendations for promotions and hiring and take disciplinary actions.

The supervisor of business administration, grade 2, is an overall supervisors who is responsible for all operations of the Alarm Center. The supervisor of business administration makes recommendations for hiring, promotions, disciplinary action and any other needs of the Alarm Center to the personnel and operations committee. The

supervisor of business administration attends all board meetings, personnel and operations meetings, and has a voice by way of recommendations and otherwise, in the actions taken by the board of directors or the personnel and operations committee, but can not vote.

There are always two (2) employees on duty at all times, and sometimes three (3) or more, although more than three would be used only during an emergency situation. There is always a shift leader (grade 4) or higher ranking person on duty on every shift. Shifts and personnel assignments are rotated periodically so that no one person works the same shift all the time, in order to balance out the work load.

With respect to the hiring of employees, the initial step taken is for a person to request an application. Applications may only be handed out to prospective employees by grade 3 personnel or higher. After an application is filled out, all applicants are interviewed by the supervisors.

In most cases the applicants are interviewed by at least two of the supervisors. Tests are given to the applicants by the supervisors, and then the supervisors make up grading sheets on the applicant and then the supervisors meet and discuss the applicants among themselves and make a recommendation to the personnel committee. The personnel committee then makes its recommendation to the board of directors. Although the final decision is made by the board, the supervisors' recommendations are generally followed.

Promotions of employees are governed by performance of the individual employee as gauged by probationary reports and tests. Tests are given periodically, and probationary reports are also prepared periodically - monthly for probationary clerk dispatchers, and quarterly for other personnel. The probationary reports are filled out by shift leaders, supervisors and the supervisor of business administration, each with the authority to fill out a report for any one of a lower grade. The probation reports are reviewed each month by the supervisors and recommendations are then submitted to

the personnel and operations committee once a month for its action. The supervisor of business operations also makes her recommendations, based upon the recommendations from the shift leaders and other supervisors.

Discipline of employees is handled in several ways. Although probationary clerk dispatchers are not entitled to take any disciplinary action, shift leaders can take disciplinary action in the form of sending someone home, or refusing to allow a person to report to duty who is incapable of performing their duties when they report for work. In that circumstance, the shift leader is authorized to refuse to allow the individual to report for duty, and send him away, and then call in someone else to work in that person's place since the Alarm Center must have two employees working and on duty at all times.

Even though one supervisor testified to the contrary, the record as a whole indicates that supervisors have the authority to take immediate disciplinary action for various rule infractions, such as failure to dispatch an alarm, sleeping on duty, a third occurrence of unexcused absence, punching another employee's time card, etc. Disciplinary actions authorized are verbal warnings or reprimands, written warnings or reprimands, a probation or pay freeze or a three-day suspension. Upon taking the action, the supervisor notifies the supervisor of business administration, who then writes a letter advising the individual of the suspension and the action taken, and also writes a report to the personnel committee with her recommendation in addition to the recommendation made by the supervisor. Again, the personnel and operations committee conducts its own investigation and makes its report and recommendation to the board of directors, but the supervisor's recommendations are generally followed.

### **CONCLUSIONS OF LAW**

In its brief the petitioner has objected to the introduction of the employer's written job descriptions, claiming that said exhibits were never properly identified and authenticated. However, the job descriptions were properly identified by two witnesses

as being a general description of the duties of each employee position, despite the fact that the job descriptions had not been distributed among the employees. Therefore, the Board will consider the exhibits as a general description of the various job duties and will admit the exhibits into evidence for that purpose.

Also, the petitioner questions the credibility of the supervisor of business administration, citing discrepancies in the testimony given at the hearing and what transpired at various board of directors' meetings. The Board, however, cannot consider the minutes of said meetings because they were not offered into evidence at the time of the hearing. At the hearing the petitioner was afforded ample opportunity to present such evidence but failed to do so. The Board, because it cannot consider evidence unless it is adduced at the hearing, cannot give any weight to the minutes of the board meetings submitted by the petitioner. Therefore, there is no discrepancy in evidence that would affect the credibility of the supervisor of business administration's testimony.

The remaining issue before the Board involves the appropriate unit determination. The petitioner seeks to be certified as public employee representative of a bargaining unit comprised of all persons employed by the North Central Fire Alarm System of St. Louis County. The employer, however, contends that those employed at grade 3 or higher are supervisors and therefore should be excluded from the bargaining unit. The Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Public Case No. 76-013 Amalgamated Transit Union vs. Bi-State Development Agency, Public Case No. 78-004. Consequently, the Board must determine which employees are actually supervisors. The Board has recently restated the factors considered in determining supervisory status in St. Charles Professional Fire Fighters, Local 1921, IAFF vs. City of St. Charles,

Public Case No. 79-024. A discussion of those factors as applicable to the present case is set out below.

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. It is clear that the supervisors and the supervisor of business administration have a substantial voice in the hiring, promotion and discipline of employees. Although the actual hiring of employees is done by the operations and personnel committee, the recommendations of those employees in grades 3 and higher are an important factor considered by the committee members. Given that the members of the board of directors are not involved in the day-to-day operations of the unit, it is most likely that the supervisors recommendations concerning hiring, promotion and discipline are given considerable weight. Therefore, the Board must conclude that grade 3 personnel and higher have the authority to effectively recommend the hiring promotion and discipline of employees in a supervisory manner.

2. Authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters. Grade 3 personnel and higher have the authority to direct and assign the work force even though this authority is seldom used because of the often routine nature of the work performed by the employees. The employees need little actual direction from the supervisors because the employees activities are somewhat passive in nature in that a major responsibility of the employees is to be present and on duty at all times, in the event someone needs assistance. Nevertheless, the supervisors are in charge of the overall and daily operation of the Alarm Center and do have the authority to direct and assign the employees should the need arise.

3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees. The supervisor of business administration (grade 2) is the highest ranking member of the nine-person work force, exercising more authority than any other employee. Consequently, in this

respect a grade 2 employee clearly must be considered a supervisor. There are three supervisors (grade 3) with roughly the same amount of authority, outranking the remaining five employees. Admittedly the ratio of supervisors to the other employees does not indicate supervisory status. However, this factor is not sufficient to outweigh other considerations that do indicate that the grade 3 personnel are indeed supervisors.

4. The level of pay including evaluation of whether the supervisor is paid for his skill or for his supervision of employees. The pay schedule for April 1, 1979 thru April 1, 1980 demonstrates that the increase in pay rate for a jump from a grade 5 to grade 4 is only 4%, but from a grade 4 shift leader to a grade 3 supervisor is a percentage increase of over 13%. This is evidence that supervisory personnel receive substantially higher wages than the probationary clerk dispatchers or the shift leaders. In view of the fact that the grade 2 and grade 3 personnel perform essentially the same functions as lower ranking employees when dispatching calls, the Board must conclude that the higher wages afforded to grade 2 and 3 employees is a result of the supervisory duties.

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees. The record indicates here that the grade 3 and higher personnel are primarily involved in supervising employees, in view of the fact that when on duty they are responsible for the overall operation of the shift, seeing that each employee carries out his duties.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees. Supervisors grade 3 or higher spend a substantial amount of their time implementing training programs, maintaining monthly reports, and overseeing and evaluating lower ranking employees concerning their ability to adequately perform their duties. Although the supervisors do often work alongside the shift leaders and probationary clerk dispatchers, such work is not sufficient to consider grades 2 and 3 employees non-supervisory personnel.



Upon careful review of the foregoing factors the Board must recognize that the supervisor of business administration (grade 2) and the supervisors (grade 3) possess the authority to be considered supervisors. They effectively recommend the hiring, promotion and discipline of employees and receive considerably higher salaries than the lower ranking employees. Consequently, the Board must conclude that the grade 2 and grade 3 personnel are true supervisors that should be excluded from the appropriate bargaining unit of the lower ranking employees.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate unit of employees of North Central County Fire Alarm System is as follows: All Shift Leaders and Probationary Clerk Dispatchers, Grade 4 and 5, but excluding Technical Dispatchers, Supervisors of Business Administration and Supervisors, Grades 1, 2 and 3.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but no later than forty-five (45) days from the date below. The exact time and place will be set forth in the notices of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote on whether or not they desire to be represented by the Communications Workers of America, AFL-CIO, for purposes of discussions relative to wages, hours, and other terms and conditions of employment.

It is hereby further ordered that the respondent shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven days from the date of receipt of this decision, an alphabetical list of names and addresses of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Entered this 29th day of May, 1980.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry  
Conrad L. Berry, Chairman

/s/ Stanley W. Cox  
Stanley W. Cox, Employer Member

/s/ Joseph Cointin (Dissent)  
Joseph Cointin, Employee Member

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**DISSENTING OPINION**

The following are the reasons for my dissenting vote in Case No. 79-059.

Testimony of Elizabeth Huffman (Grade 2).

1. On page 4, Line 9, she testified she was Supervisor of Business Administration.
2. Page 3, Line 12 through 16, she states she is in charge of daily Operations of the Alarm Centers, of the Alarm Center totally. She handles all of the business of the Alarm Center. She takes care of all the payroll and personnel matters. She answers directly to the Board of Directors and acts under their orders.
3. Page 9, Lines 14 through 21, she writes recommendations for terminations, promotions and disciplinary actions.
4. Page 10, Lines 12 through 15, she states that all employees rotate shifts in order to learn all operations on various shifts. Page 10, Lines 21 through 23, she states this is the way of equalizing the responsibilities among the workers.
5. Page 11, Lines 3 through 11, she states she makes the final decision on who is to be hired and who would make better dispatchers and who would not.
6. Page 16, Lines 4 through 10, she repeats her statement that she makes recommendations to Operations and Personnel Committee on who to hire.
7. Page 61, Lines 22 through 25, she states she feels more secure if she has somebody else's opinion.

From all testimony given it appears that the only employee or officer who can actually fire an employee is the one who has the so called "bug" in the Center of his or her home.

It also appears that Elizabeth Huffman can not do any hiring or firing or actual supervision.

The respondent also uses the words "responsibility of certain employees," not "authority of certain employees".

In testimony given by Elizabeth Huffman disciplinary action must be approved by the Operation and Personnel Committee.

No where in the testimony does it state that any of the employees in any Grade directs the working force or has the right to "hire or fire".

It is for these reasons I must dissent to the award in case number 79-059.

Signed by Joseph Cointin \_\_\_\_\_  
State Board of Mediation, Board Member

May 17, 1980